

Key Financial Secrecy Indicators 3: Recorded Company Ownership

What is measured?

This indicator assesses whether a jurisdiction requires all available types of companies to submit beneficial ownership information upon incorporation to a governmental authority, and whether it requires this information to be updated, regardless of whether or not this information is made available on public record.

A precondition for awarding a positive result is that all available types of companies with limited liability must be required to submit beneficial ownership information except for publicly listed companies, where owners of the listed shares are not required to be recorded.

To meet a reasonable standard, registered ownership information must comply with minimum requirements: it should include

- a) the full names of all beneficial owners, and for each beneficial owner
- b) their country of residence, and
- c) a passport ID-number, a birthdate and place or a Taxpayer Identification Number.

The recorded beneficial owners must be the natural human beings who have the right to enjoy ownership of the rewards flowing from ownership of the entity, as prescribed by anti-money laundering standards¹. For this purpose, unless it is a publicly quoted entity, trusts, foundations, partnerships, limited liability corporations and other legal persons do not count as beneficial owners.

This indicator is mainly informed by four different types of sources². First, the Global Forum peer reviews³ have been analysed to find out what sort of ownership information companies must register with a government agency. An important distinction is made between beneficial ownership information which refers to the ultimate human beings owning the company on the one hand, and legal ownership which “refers to the registered owner of the share, which may be an individual, but also a nominee, a trust or a company, etc.” (OECD 2010⁴: 189). A governmental authority is defined so as to include “corporate registries, regulatory authorities, tax authorities and authorities to which publicly traded companies report” (ibid.) and is used interchangeably here with “government agency” or “public institution”.

The second type of source used was private sector websites (Lowtax.net, Odra.com, Offshoresimple.com, etc.), the third, Financial Action Task Force (FATF) peer reviews⁵, and the fourth, the results of the TJN-Survey 2013.

The indicator resembles KFSI 4 relating to public company ownership information. However, this indicator assesses only whether the beneficial ownership information needs to be recorded at a government agency and updated, without the proviso that the information is available online. Therefore, if a jurisdiction is credited for published beneficial ownership in KFSI 4, it was credited for this indicator too. However, the opposite does not hold true: some jurisdictions may require beneficial ownership information to be submitted and updated, but do not require its publication online.

Why is it important?

Absence of beneficial ownership information obstructs law enforcement. When a jurisdiction, such as the US state of Wyoming (see [FATF evaluation 2006 for details](#)⁶, pages 236, or [here](#)⁷), allows private companies to be formed without recording beneficial ownership information, the scope for domestic and foreign law enforcement agencies to look behind [the corporate veil](#)⁸ is very restricted.

These so-called 'shell companies' are nothing more than letterboxes serving as conduits for financial flows in many different guises. Foreign individuals can use a front company to shift money illicitly while claiming to their domestic government authorities that they have no ownership interest in the company. For example, the proceeds of bribery and corruption can be hidden and transferred via anonymous shell companies. The World Bank reported in 2011:

"Our analysis of 150 grand corruption cases shows that the main type of corporate vehicle used to conceal beneficial ownership is the company [...] Companies were used to hide the proceeds of corruption in 128 of the 150 cases of grand corruption reviewed." ([World Bank 2011: 20, 34](#))⁹.

For illustrative purposes, two examples are provided below:

On March 1, 2010, BAE Systems plc. (BAE) was ordered to pay a US\$400 million criminal fine following its admission of guilt, among others, of conspiracy to defraud the United States and to making false statements about its Foreign Corrupt Practices Act (FCPA) compliance programme¹⁰. BAE's conspiracy involved the use of offshore shell companies - most of which were owned by BAE - to conceal the role of intermediaries it was hiring to assist in promoting Saudi Arabian fighter deals. One of the shell companies used by BAE in the deals was incorporated in the British Virgin Islands (BVI), where incorporation of a legal entity

does not require the disclosure of the physical location of the place of business nor the legal and beneficial ownership information¹¹. In 2001, BAE used the BVI offshore company to make payments of over £135.000.000 and over US\$14.000.000 to its marketing advisers and agents. The payments to these intermediaries were made by BAE despite the fact that they failed to perform the requisite due diligence under the FCPA and even when there was a high probability that the payments would be used to ensure that BAE was favoured by the foreign government.

According to the United States District Court, for reasons related to its business interests, BAE gave the US authorities inadequate information related to the identity and work of its advisers and at times avoided communicating with its advisers in writing. Furthermore, the contracts and other relevant materials related to the intermediaries were maintained by secretive legal trusts in offshore locations¹².

The use of shell entities not only allowed BAE to conceal the stream of payments to these agents and to circumvent laws in countries that did not allow agency relationships, but also hindered the ability of authorities to detect the schemes and trace the money¹³.

Another example is the case of Haiti's state-owned national telecommunications company ('Haiti Teleco'), which used corporate vehicles to accept bribes and launder funds. Bribes were paid to Haiti Teleco's officials, including the director of Haiti Teleco, by representatives of three international telecommunications companies, based in the U.S., with which Haiti Teleco contracted. In exchange, Haiti Teleco's officials provided these companies commercial advantages (e.g. preferential and reduced telecommunications rates), at the expense of Haiti Teleco's revenue. The representatives systematically used intermediary shell companies to funnel wire transfers and cheque payments for fake consulting services that were never rendered.

The funds were transferred from the intermediary accounts to Haiti Teleco's officials, among others, by false notations (e.g. fabricated invoice reference numbers in the memo section of the cheques), routinely made in order to conceal the true nature of the payments¹⁴. Once Haiti Teleco's director completed his tenure, he was employed by two of the three U.S. companies that had paid him bribes, and from that position he continued to facilitate the same corruption scheme, paying bribes to the person who had succeeded him as director in Haiti Teleco. The use of shell companies as intermediaries concealed the names of the individual bribe-givers and bribe-takers as direct counterparties in any transactions transferring bribe money¹⁵.

With respect to tax evasion, consider this hypothetical example: suppose that a Kenyan national, normally resident in Nairobi, claims that a Wyoming registered company delivers consultancy services to his Kenyan business and the Wyoming company charges US\$1,000 a month for these services. As a consequence the Kenyan national pays US\$1,000 every month to the Wyoming company and claims that a) he is no longer in possession of these funds since he paid them to a foreign company for services supplied, and b) that the US\$1,000 paid monthly is a business expense that he may off-set against his income in his next tax return.

In reality, however, the Wyoming company is a shell owned and controlled by the Kenyan national. No one knows this fact. While the Kenyan tax authority might have a suspicion that these fund transfers are for illicit purposes e.g. tax evasion, in the absence of registered ownership information the only way for the Kenyan tax authority to confirm its suspicions may be - under certain conditions - to contact its US-counterpart.

However, the US-tax authority cannot readily access the required data on behalf of the Kenyan authorities if the ownership information is not registered. In order to find out it could undertake the lengthy exercise of going through the judicial system to summon the registered company agent in Wyoming. But the due process necessary may take months to initiate and even then, a possible result is that the required beneficial ownership information is unavailable in the USA and is held in a third country. That third country may, of course, be a secrecy jurisdiction where a trust has been placed into the ownership structure for exactly this reason.

Faced with such time consuming and expensive obstacles to obtaining correct information on beneficial ownership of offshore companies, most national authorities seldom, if ever, pursue investigations.

What are the crimes that might hide behind a lack of company ownership information?

Tax evasion by individuals, financial fraud, hiding of the proceeds of corruption, organised crime (especially drug trafficking), illegal arms trading, trafficking in human beings, money laundering, infringement of competition rules, non-payment of creditors, bankruptcy fraud, the covering of illicit intelligence activity and more besides might hide behind the absence of registration requirements of company ownership.

Results Overview

Currently, none of the reviewed jurisdictions require companies to register beneficial ownership information with a government authority.

Table 1: Recorded Company Ownership - Overview

Number of jurisdictions with recorded company ownership	0
Number of jurisdictions without recorded company ownership	82

¹ FATF defines beneficial owners as the “natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.” See page 110 in Financial Action Task Force 2012: The FATF Recommendations. International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (February 2012), Paris, in:

http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf; 15.07.2013.

² To see the sources we are using for particular jurisdictions please check out the assessment logic table in Annex C here <http://www.financialsecrecyindex.com/PDF/FSI-Methodology.pdf> and the corresponding information for individual countries in our database, available at www.financialsecrecyindex.com/database/menu.xml.

³ The Global Forum peer reviews refer to the peer review reports and supplementary reports published by the Global Forum on Transparency and Exchange of Information for Tax Purposes. They can be viewed at: <http://www.eoi-tax.org/>; 15.07.2013.

⁴ Organisation for Economic Co-Operation and Development 2010: Tax Co-operation 2010. Towards a Level Playing Field - Assessment by the Global Forum on Transparency and Exchange of Information, Paris.

⁵ While the FATF consolidated its recommendations to a total of 40 in 2012, the old recommendations are used here because the assessment of compliance with the new recommendations will only begin in 2013. The relevant new FATF recommendations from 2012 are recommendations 37, 38, 39 and 40. In the next FSI, the results of the new assessments will be taken into account.

⁶ <http://www.fatf-gafi.org/dataoecd/44/9/37101772.pdf>; 15.07.2013.

⁷ <http://www.economist.com/node/21529021>; 15.07.2013.

⁸ <http://www.oecdbookshop.org/oecd/display.asp?K=5LMQCR2KM20R&DS=Behind-the-Corporate-Veil>; 15.07.2013.

⁹ <http://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf>; 15.07.2013

¹⁰ See <http://www.justice.gov/opa/pr/2010/March/10-crm-209.html>; 15.07.2013.

¹¹ See British Virgin Islands Bus. Co’s Act § (9)(1)(2004), British Virgin Islands Bus. Co’s Act § (41)(1)(d) (2004).

¹² See <http://www.justice.gov/criminal/fraud/fcpa/cases/bae-system/02-01-10baesystems-info.pdf>; 15.07.2013.

¹³ The World Bank & UNDOC, “The Puppet Masters- How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About it” (2011) (hereinafter: “The Puppet Masters”), pp.198-202.

¹⁴ The Puppet Masters, p. 212.

¹⁵ The Puppet Masters, pp. 212-217. According to the U.S. Department of Justice, in 2010, following the admission of guilt to money laundering conspiracy by Haiti Teleco’s director, he was sentenced to

four years in prison and was ordered to pay US\$1,852,209 in restitution and to forfeit US\$1,580,771. Additional individuals involved in the bribery scheme were also sentenced to prison terms and were ordered to pay high monetary fines as a result of their convictions. As of July 2012, additional indictments were made against new defendants involved in the scheme. See Press Release, U.S. Department of Justice, "Former Haitian Government Official Pleads Guilty to Conspiracy to Commit Money Laundering in Foreign Bribery Scheme" (March 12, 2010); 15.07.13; *See also* Plea Agreement pp. 8-9, United States v. Antoine, No. 09-cr-21010 (S.D. Fla. February 19, 2010); 27.9.12. *See also* The Puppet Masters, pp. 212-217.